

# City of Cape May

Cape May County, New Jersey

## Housing Element & Fair Share Plan



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# Housing Element & Fair Share Plan

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## A. INTRODUCTION

The Municipal Land Use Law N.J.S.A 40:55D-28(b)(3) requires a municipal master plan to include a Housing Element. It is a component of the master plan which has the following characteristics:

- Shall be designed to achieve the goal of providing affordable housing to meet the fair share housing obligation, by demonstrating that zoning provides for adequate capacity and opportunity to accommodate residential and employment growth.
- Includes a statement of the standards, objectives and principals that includes but is not limited to residential standards and proposals for the construction and improvement of housing. It takes into account the environmental conditions, intensity of development, and existing zoning of a community; and a housing element which includes an analysis of housing, demographic and employment characteristics, and an analysis of municipal lands appropriate for affordable housing.
- It sets forth the municipal fair share obligation.

The Fair Housing Act of 1985 (FHA) establishes the requirement that every municipality within New Jersey must provide a “realistic opportunity for a fair share of its region’s present and prospective needs for housing low and moderate income families”.

The Fair Housing Act of 1985 also created the Council on Affordable Housing (COAH) to administer and implement affordable housing policy among local governments. The New Jersey Council on Affordable Housing (COAH) was established to provide the regulations for municipalities to follow in preparing the housing element and fair share plan to provide a realistic opportunity for the provision of affordable housing. COAH reviews the municipal housing element and fair share plan to determine compliance with the regulations and may grant substantive certification. Upon filing and certification, the petitioning municipality is protected from allegations of exclusionary zoning for a period of ten (10) years or December 20, 2015, whichever is earlier.

On December 20, 2004, the Council on Affordable Housing (COAH)’s third round (1999-2014) substantive and procedural rules became effective in accordance with N.J.A.C. 5:94 and the Procedural Rules can be found at N.J.A.C. 5:95. These rules govern affordable housing obligations for the period 1999-2014 for municipalities that received third round substantive certification prior to January 25, 2007.

On June 2, 2008 (with amendments dated to October 20, 2008) the Council on Affordable Housing (COAH)’s third round (1999-2014) substantive and procedural rules became effective in accordance with N.J.A.C. 5:97 and the Procedural Rules can be found at N.J.A.C. 5:96. These rules govern affordable housing obligations for the period 1999-2014 for municipalities, like Cape May City, that have not received third round substantive

certification prior to January 25, 2007.

These rules use a new methodology, known as growth share, to calculate a municipality's new construction affordable housing obligation. Under growth share, a municipality's affordable housing obligation is based on actual growth taking place in the municipality over time, and the affordable housing obligation is assigned as a proportion of that growth.

The third round methodology represents a substantial departure from the first and second round methodologies in four important respects. First, it adopts a growth share methodology, which bases the need for affordable housing upon growth projected by a municipality and assigns an affordable housing responsibility as a proportion of that growth. Second, it tightens the definition of realistic opportunity by requiring all participating municipalities to actually construct or otherwise realistically provide for affordable housing, not just zone for it. Third, it provides more flexibility for each municipality to meet its affordable housing obligation. And finally, it encourages municipalities to plan for future growth and ensures that sound planning at the local level drives the provision of affordable housing.

Under this new growth share methodology, municipalities are no longer assigned a specific number of new construction affordable units to provide independent of growth taking place in the municipality. Now, the municipality's affordable housing obligation is determined based upon the municipality's actual level of residential and non-residential growth as follows:

For every five market-rate units constructed in your municipality, the municipality is responsible for providing one affordable housing unit.

For every 16 jobs created, as measured by new or expanded non-residential construction, one (1) affordable unit must be provided.

The third round rules increase flexibility in satisfying your affordable housing obligation. They continue prior programs, eliminate some restrictions for obtaining credits, and introduce new options to create affordable housing. COAH encourages the municipality to consider innovative programs or approaches provided they are consistent with performance standards in the rules.

The new rules are consistent with the New Jersey State Development and Redevelopment Plan (the State Plan). Under the growth share methodology, municipalities that experience growth are required to provide affordable housing in proportion to their overall residential and nonresidential growth, ensuring that the provision of affordable housing is tied to actual growth in the appropriate locations.

Cape May City's affordable housing obligation is cumulative, and includes affordable housing need for the period 1987 to 2014. The affordable housing obligation consists of three components:

- The rehabilitation share (2000)
- The prior round obligation (1987-1999)
- The growth share (1999-2018)

The rehabilitation share is defined as the number of deficient housing units occupied by low- and moderate-income households within a municipality as established by NJSA 5:97 Appendix B. This share is established using municipal level data from the 2000 US Census.

The prior round obligation (1987-1999) is established by NJSA 5:97 Appendix C. This obligation is defined as the cumulative 1987-1999 fair share obligation determined by new construction during this time period.

The growth share (1999-2018) is established by NJSA 5:97 Appendix A. The growth share is the affordable housing obligation generated in each municipality by both the residential and non-residential development from 2004 through 2018 and is represented by a ratio of one affordable housing unit among five housing units constructed plus one affordable housing unit for every 16 newly created jobs as measured by new or expanded non-residential construction within the municipality in accordance with chapter Appendix D pursuant to NJAC 5:97-2.

Affordable housing is defined by COAH regulations as a dwelling, either for sale or rent that is within the means of households of either low or moderate income. Low income households are those with annual incomes that were equal to 50% or less than the median income for the region in which they are located. Cape May is located within COAH's Region 6. Moderate income households are defined as those earning between 50% and 80% of the regional median income.

The key to determining whether the cost of housing meets low or moderate "affordable" guidelines is the proportion of monthly household income spent on housing. Renters are expected to use no more than 30% of their income for housing while homeowners' housing expenses are limited to 28%. These monthly housing costs include utilities and, in the case of sale housing, mortgage principal and interest, taxes, and insurance.

The Housing Element shall be adopted by the planning board and endorsed by the governing body prior to the municipal filing pursuant to N.J.A.C. 5:96-2 or the municipal petition for substantive certification pursuant to N.J.A.C. 5:96-3.

## **B. MUNICIPAL OVERVIEW**

The City of Cape May is a 2.2 square mile community located at the southern end of Cape May County. Cape May is separated from the New Jersey mainland by Cape May Harbor and the Cape May Canal. Cape May is bounded to the south by the Atlantic Ocean, and bounded to the north and west by the Borough of West Cape May and Lower Township. The eastern end of the city is occupied by a U.S.Coast Guard base, which occupies approximately 20% of the land area in the City. The remainder of the City, not impacted by environmental constraints, is primarily developed.

Cape May is influenced by sensitive environmental features that are common to seashore communities. Wetlands occur throughout all sections of the city and limit development on vacant lands, particularly near Cape May Harbor in the east end. Fragile dune environments abut the City's beach resources.

Cape May considers itself to be America's first resort community and tourism continues to play an important role in the City. Cape May has an extraordinary collection of late-nineteenth century Victorian architecture that has led to the City's designation as a National Historic Landmark. Summer remains Cape May's busiest season, with vacationers being attracted by a combination of its historic ambiance and its beachfront location.

## C. INVENTORY OF CAPE MAY CITY HOUSING STOCK:

A Housing Element prepared in accordance with N.J.A.C. 5:97-2 and N.J.S.A. 40:55D-1 is required to include an inventory of the municipality's housing stock by number, age, condition, purchase or rental value, occupancy characteristics and housing type, including the number of units affordable to low and moderate income households and substandard housing units capable of being rehabilitated. Inventory information was taken from the 1990 and 2000 U.S. Census Data and other source information as identified. U.S. Census Data for 2006 was not available for the municipality.

### Number of Housing Units:

The total number of housing units in 2000 within the city of Cape May is 4,064 units of which 1,821 are occupied units. The total number of vacant housing units is 2,243 of which 2,089 units are seasonal units. A further breakdown of units, including the 0.3% increase between 1990 and 2000 Census data is summarized in Table No. 1 below.

**TABLE NO. 1  
CHANGES IN HOUSING CHARACTERISTICS  
IN THE CITY OF CAPE MAY, NEW JERSEY  
BETWEEN 1990 AND 2000**

CHARACTERISTICS	1990	2000	CHANGE %
Total Units	4,052	4,064	+0.3
Total Vacant Units	2,184	2,243	+2.7
Seasonal Units	1,121	2,089	+86.35
Other Vacant Units	1,063	154	-85.5
Total Occupied Units	1,868	1,821	-2.5
Owner-Occupied Units	760	1,034	+36.1
Renter-Occupied Units	884	787	-11.0

Source: Census Data, 2000, GCT-H5. General Housing Characteristics: 2000; Census Data, 1990

As indicated in the 2003 Master Plan, there were 4,064 dwelling units in 2000. This represents an increase of only 12 units since the 4,052 reported dwelling units in 1990. The slow growth in the housing stock is again expected to continue due to the lack of land for new construction. Of the 1,821 occupied housing units in Cape May in 2000, 1,034 or 56.8% were owner occupied and 787 or 43.2% were renter-occupied. There were 2,243 vacant housing units, 2,089 of which are listed as seasonal units. There was a vacancy rate of 1.1% for homeowner units and 9.7% for rental units in 2000. Cape May has a relatively high percentage of rental units, 43.2%, compared to the County as a whole, which has 25.8%.

### Age of Housing Stock:

The relative age of housing units is summarized in Table No. 2 below. The majority of housing units (29.1%) were constructed prior to 1940. The vast majority of Cape May's housing stock,

75%, was built prior to 1980. A total of 240 housing units were constructed between 1990 and 2000.

**TABLE NO. 2**  
**YEAR STRUCTURE BUILT**  
**CITY OF CAPE MAY, NEW JERSEY**

<b>YEAR CONSTRUCTED</b>	<b>NUMBER</b>	<b>PERCENT (%)</b>
1999 to 2000	30	0.7%
1995 to 1998	95	95%
1990 to 1994	115	2.8%
1980 to 1989	785	19.3%
1970 to 1979	797	19.6%
1960 to 1969	468	11.5%
1940 to 1959	593	14.6%
Pre – 1940	1,181	29.1%
Total	4,064	100.0

Source: Census Data 2000, QT-H7. Year Structure Built and Year Householder Moved Into Unit: 2000; Master Plan, City of Cape May.

#### Condition of Housing Stock:

Housing stock conditions are identified based on occupants per room rates which are summarized in Table No. 3 below. Housing stock conditions are also measured by improvements such as heating types. The type of heating provided for occupied housing units is summarized in Table No. 4 below. A breakdown of the number of units in a structure is provided in Table No. 5.

**TABLE NO. 3**  
**OCCUPANTS PER ROOM/OCCUPIED UNITS**  
**CITY OF CAPE MAY, NEW JERSEY**

<b>OCCUPANTS PER ROOM</b>	<b>1990</b>	<b>2000</b>
1.00 person or less	1841	1798
1.01 – 1.50 persons	23	12
1.51 persons or more	4	11
Total	1868	1821

Source: US Census Bureau; 1990 & 2000

**TABLE NO. 4**  
**HOUSE HEATING FUEL/OCCUPIED HOUSING UNITS**  
**CITY OF CAPE MAY, NEW JERSEY**

TYPE OF HEATING FUEL	OCCUPIED UNITS	PERCENT (%)
Utility gas	1,135	62.3
Bottled, tank, or LP gas	9	0.5
Electricity	572	31.4
Fuel oil, kerosene, etc.	105	5.8
Coal or coke	0	0
Wood	0	0
Solar energy	0	0
Other fuel	0	0
No fuel used	0	0
Total	1,821	100.0

Source: US Census Bureau; 2000

**TABLE NO. 5**  
**UNITS IN STRUCTURE**  
**CITY OF CAPE MAY, NEW JERSEY**

UNITS IN STRUCTURE	NUMBER	PERCENT
One Unit Detached	751	41.24
One Unit Attached	371	20.37
2 Units	108	5.93
3 or 4 Units	185	10.16
5 to 9 Units	149	8.18
10 to 19 Units	34	1.87
20 or More Units	26	1.43
50 or More Units	197	10.82
Boat, RV, Van, Mobile Home	0	0
Total	1,821	100.0

Source: US Census Bureau; 2000

#### Purchase and Rental Value of Housing Stock:

Owner occupied housing values are summarized in the Table No. 6 below. The median value of owner occupied housing within Cape May has risen from \$156,800 in 1990 to \$212,900. Renter occupied housing units rent values are indicated in Table No. 7 below. Median monthly rental values have increased from \$425 in 1990 to \$548 in 2000.



**TABLE NO. 6**  
**SPECIFIED OWNER-OCCUPIED HOUSING UNITS BY VALUE**  
**CITY OF CAPE MAY, NEW JERSEY**

VALUE	1990	PERCENT (%)	VALUE	2000	PERCENT (%)
Less than \$75,000	32	4.2	Less than \$50,000	7	0.85
\$75,000-\$99,999	94	12.37	\$50,000 – \$99,999	60	7.27
\$100,000 – \$124,999	112	14.74	\$100,000 – \$149,999	132	16
\$125,000 – \$149,999	119	15.66	\$150,000 – \$199,999	178	21.58
\$150,000 – \$174,999	85	11.18	\$200,000 – \$299,999	238	28.85
\$175,000 – \$199,999	82	10.79	\$300,000 – \$499,999	163	19.76
\$200,000 – \$249,999	106	13.95	\$500,000 – \$999,999	47	5.70
\$250,000 – \$299,999	52	6.84	\$1,000,000 Or more	0	0
\$300,000 – \$399,999	46	6.05			
\$400,000 – \$499,999	16	2.11			
\$500,000 or more	16	2.11			
<b>Total</b>	760	100.0	<b>Total</b>	825	100.0
<b>Median Value</b>	<b>\$156,800</b>		<b>Median Value</b>	<b>\$212,900</b>	

Source: US Census Bureau; 1990 & 2000

The median housing value of all owner occupied housing in 1990 was \$156,800 and \$212,900 in 2000. As identified in the 2003 Master Plan, these figures are a self-reported sample from the census and it is the consensus of the Board that these values are too low. In 2000, more than one-third, 36.3%, of existing residents in Cape May are paying more than 30% of their monthly income for housing. In 2000, more than 65% of the rental units in Cape May had a gross rent of less than \$750. The median rent for all rental units in 2000 was \$564. Approximately 44% of people renting housing in Cape May pay less than 30% of their income on housing. Table No. 7 provides the specified renter-occupied housing units within the city.

**TABLE NO. 7**  
**SPECIFIED RENTER-OCCUPIED HOUSING UNITS**  
**CITY OF CAPE MAY, NEW JERSEY**

RENT	1990	PERCENT (%)	RENT	2000	PERCENT (%)
Less than \$100	24	2.71	Less than \$200	42	5.38
\$100 - \$149	55	6.22	\$200 - \$299	47	6.02
\$150 - \$199	32	3.62	\$300 - \$499	160	20.49
\$200 - \$299	67	7.58	\$500 - \$749	345	44.17
\$300 - \$399	130	14.71	\$750 - \$999	40	5.12
\$400 - \$499	221	25.00	\$1,000 - \$1,499	0	0
\$500 - \$599	157	17.65	\$1,500 or more	0	0
\$600 - \$699	67	7.58			
\$700 - \$749	7	0.79			
\$750 - \$999	14	1.58			
\$1,000 or more	8	0.91			
<b>No cash rent</b>	102	11.54	<b>No cash rent</b>	147	18.82
<b>Total</b>	884	100.0	<b>Total</b>	781	100.0
<b>Median Value</b>	<b>\$425</b>		<b>Median Value</b>	<b>\$548</b>	

Source: US Census Bureau; 1990 & 2000

Housing Types and Occupancy Characteristics of Housing Stock:

Occupancy characteristics and types of housing stock are summarized in Tables No. 8 and No. 9 below. Table No. 8 illustrates the municipal composition of the various housing types. Table No. 9 depicts a summary of bedroom numbers within various occupied housing types.

**TABLE NO. 8**  
**UNITS IN STRUCTURE**  
**CITY OF CAPE MAY, NEW JERSEY**

UNITS IN STRUCTURE	NUMBER	PERCENT
One Unit Detached	751	41.24
One Unit Attached	371	20.37
2 Units	108	5.93
3 or 4 Units	185	10.16
5 to 9 Units	149	8.18
10 to 19 Units	34	1.87
20 or More Units	26	1.43
50 or More Units	197	10.82
Boat, RV, Van, Mobile Home	0	0
<b>Total</b>	<b>1,821</b>	<b>100.0</b>

Source: US Census Bureau; 2000

**TABLE NO. 9**  
**NUMBER OF BEDROOMS IN OCCUPIED HOUSING UNITS**  
**CITY OF CAPE MAY, NEW JERSEY**

UNITS IN STRUCTURE	NUMBER	PERCENT
None	76	4.17
One	343	18.84
Two	433	23.78
Three	520	28.56
Four	244	13.40
Five or more	205	11.26
Total	1,821	100

Source: US Census Bureau; 2000

#### **D. ANALYSIS OF CAPE MAY CITY DEMOGRAPHIC CHARACTERISTICS:**

##### Population Trends:

Total population growth rates for Cape May City is depicted in Table No. 10 below. Total population for the municipality is 4,034 for the year 2000 which represents a reduction of 13.58% from the population of 4,668 in 1990. Cape May City's population shows a steady decrease which is most likely attributed to increased seasonal homeowner population and smaller household sizes.

**TABLE NO. 10  
RATE OF POPULATION GROWTH  
CITY OF CAPE MAY, NEW JERSEY**

<b>YEAR</b>	<b>POPULATION</b>	<b>CHANGE (NO.)</b>	<b>CHANGE (%)</b>
1950	3,607	-	-
1960	4,477	870	<b>19.43</b>
1970	4,392	-85	<b>-1.94</b>
1980	4,853	443	<b>9.13</b>
1990	4,668	-185	<b>-3.96</b>
2000	4,034	-634	<b>-13.58</b>

Source: [www.capemaycountygov.net](http://www.capemaycountygov.net)

##### Household Size:

Cape May City's average household size has decreased from 2.50 persons in 1990 to 2.02 persons in 2000 as summarized in Table No. 11 below.

**TABLE NO. 11  
AVERAGE HOUSEHOLD SIZE  
CITY OF CAPE MAY, NEW JERSEY**

<b>YEAR</b>	<b>TOTAL POPULATION</b>	<b>NUMBER OF OCCUPIED HOUSING UNITS</b>	<b>HOUSEHOLD SIZE</b>
1990	4,668	1,868	2.50
2000	4,034	1,821	2.02

Source: US Census Bureau; 1990, 2000

##### Age & Race Characteristics:

As indicated in the 2003 Master Plan, the age distribution of the population can have important implications for the housing plan. Communities with a relatively large proportion of children have a need for larger family units while those with high proportions of senior citizens may have

a need for smaller units. The population of Cape May has aged between 1990 and 2000. The percentage of each age group under age 35 has decreased, and the percentage of each age group over 35 has increased. In 1990, more than 47% of the population was under 35 years of age, while in 2000, that percentage had changed to just over 37% of the population. The median age in 1990 was 37.2, compared to 37.6 for the County as a whole. In 2000, the median age had risen to 47.4 compared to 42.3 for the County.

Cape May City's age and gender characteristics are illustrated in Table No. 12 below. Racial composition of the municipality is summarized in Table No. 13.

**TABLE NO. 12  
AGE AND GENDER CHARACTERISTICS, 2000  
CITY OF CAPE MAY, NEW JERSEY**

AGE GROUP	MALE	FEMALE	TOTAL	PERCENT (%)
Under 5	86	81	167	4.1
5 – 9	86	102	188	4.7
10 – 14	110	88	198	4.9
15 – 19	187	81	268	6.6
20 – 24	227	74	301	7.5
25 – 29	101	91	192	4.8
30 – 34	94	97	191	4.7
35 – 44	203	212	415	10.3
45 -54	229	258	487	12.1
55 – 59	108	132	240	5.9
60 – 64	112	127	239	5.9
65 - 74	244	325	506	14.3
75+	200	372	572	14.2
Total	1,987	2,047	4,034	100
Median Age	39.8	52.9	47.4	

Source: [US](#) Census Bureau: 2000

**TABLE NO. 13  
RACIAL COMPOSITION, 2000  
CITY OF CAPE MAY, NEW JERSEY**

RACE	NUMBER	PERCENT (%)
White	3,684	91.3
Black or African American	121	5.3
Asian	16	0.4
Two or more races	61	1.5
Some other race	53	1.3
Total	4,034	100

Source: [US](#) Census Bureau: 2000

### Income Level:

Household income levels are provided in Table No. 14. The median household income for 2000 is \$33,462. It should be noted that approximately 34% of household income levels are below \$25,000.

**TABLE NO. 14**  
**HOUSEHOLD INCOME, 2000**  
**CITY OF CAPE MAY, NEW JERSEY**

INCOME CATEGORY	HOUSEHOLDS	PERCENT (%)
<\$10,000	174	9.5%
\$10,000 - \$14,999	148	8.1%
\$15,000 - \$24,999	300	16.4%
\$25,000 - \$34,999	315	17.3%
\$35,000 - \$49,999	256	14.0%
\$50,000 - \$74,999	254	13.9%
\$75,000 - \$99,999	159	8.7%
\$100,00 - \$149,999	79	4.3%
\$150,000 - \$199,999	74	4.1%
\$200,000+	67	3.7%
Total	1,826	100%
Median Household Income	\$33,462	

Source: [US](#) Census Bureau: 2000

### Employment Status, Trends & Characteristics of Residents:

Table No. 15 indicates the New Jersey Department of Labor covered by unemployment insurance employment differences between year 1990 and 2000. The number of covered jobs has decreased 17.8% over the ten year period.

**TABLE NO. 15**  
**COVERED EMPLOYMENT**  
**CITY OF CAPE MAY, NEW JERSEY**

YEAR	NUMBER OF JOBS
1990	
Private	985
Government	423
Total	1408
2000	
Private	882
Government	276
Total	1158

Source: State of New Jersey, Department of Labor, Office of Labor Planning & Analysis, Trends in Employment and Wages Covered by Unemployment Insurance (1997-1999).

Employment Characteristics and Occupation Patterns of the Community's Residents:

Tables No. 16 and No. 17 provide a summary of employment status within the City by gender and occupation type. Approximately 96% of Cape May City's labor force was employed in 2000.

**TABLE NO. 16**  
**EMPLOYMENT STATUS OF PERSONS 16 AND OVER BY GENDER**  
**CITY OF CAPE MAY, NEW JERSEY**

<b>AGE GROUP</b>	<b>MALE</b>	<b>FEMALE</b>	<b>TOTAL</b>
Armed Forces	442	49	<b>491</b>
Civilian Labor Force	729	765	<b>1,494</b>
Employed	702	661	<b>1,363</b>
Unemployed	27	104	<b>131</b>
Unemployment Rate: %	1.6	5.8	<b>3.8</b>
Not in Labor Force	498	970	<b>1,468</b>
Total	1,669	1,784	<b>3,453</b>
(Participation Rate:%)	42	37	<b>39</b>

Source: [US](#) Census Bureau: 2000

**TABLE NO. 17**  
**EMPLOYED PERSONS 16 AND OVER BY OCCUPATION**  
**CITY OF CAPE MAY, NEW JERSEY**

<b>INDUSTRY</b>	<b>NUMBER</b>	<b>PERCENT</b>
Management, professional and relates occupations	459	33.68
Service occupations	286	20.98
Sales and office occupations	454	33.31
Farming, fishing, and forestry occupations	12	0.88
Construction, extraction and maintenance occupations	81	5.94
Production, transportation, and material moving occupations	71	5.2
Total	1,363	100

Source: [US](#) Census Bureau: 2000

## **E. FAIR SHARE ANALYSIS AND DETERMINATION:**

As indicated in the 2003 Master plan, Cape May's Housing Plan received COAH certification on July 9, 1997. The housing obligation determined for the municipality was 33 units. The precertified need was 91 units, of which 33 units were rehabilitated and 58 were inclusionary. Due to the lack of available land in Cape May for new construction, a vacant land credit of 58 units was granted by COAH, leaving Cape May with an affordable housing obligation of 33 units. Cape May, through the rehabilitation of existing units since 1990, has met its prior round and rehabilitation affordable housing obligation and, in fact, has 25 units in excess of its obligation. These figures are based upon COAH's Round II allocation, which technically expired in 1999. The COAH certification of Cape May's Housing Element expired on July 9, 2003. Cape May must address the Third Round growth share (1999-2018) obligation and proposes the following:

### Existing & Planned Infrastructure:

Cape May City is serviced by City wide public sewer and public water systems operated by Cape May City Sewer and Water Department. Public infrastructure services all existing development and has excess capacity to service all anticipated growth within the City. Cape May City has been proactive in dealing with potable water availability issues and also operates the first desalination water plant within New Jersey.

### Anticipated Land Use Patterns and Zoning Type Demand:

There are no anticipated changes in zoning that would affect current land use patterns. It is estimated that the development patterns will continue similar to current rates and then slow as developable properties become scarce.

### Municipal Economic Development Policies:

There are currently no existing or anticipated formal municipal policies that are directly impacting or constraining development within the City.

### Development Constraints:

Cape May City is a seashore community bordered by the Atlantic Ocean, Cape Island Creek and Cape May Canal. State and Federal regulations pertaining to wetlands and waterfront development severely restrict potential development in many portions of the City. Much of the vacant land remaining is undeveloped for these reasons. As these restrictions have only become more restrictive, it is anticipated that most of the future development within the City will be infill



or redevelopment of existing developed properties. The City has little or no control over environmental regulations that constrain growth within the municipality.

Status of State Planning Commission Plan Endorsement:

At the time of adoption of this plan, Cape May City is actively pursuing the re-establishment of the expired Cape May City Center Designation. A formal petition by the municipality is anticipated in the near future.

Municipal Household Projections:

The plan relies on the household projections for the municipality as provided in Appendix F of COAH's rules (NJAC 5:97). COAH's projections rely on the following assumptions:

*Housing growth of a municipality should slow down as the municipality's physical growth capacity is being reached. In other words, a municipality is unlikely to sustain its historical growth rates as measured between the 1993 and 2002 period in the following 16 years if it has already approached a high build-out level.*

*To capture this relationship between the anticipated housing growth rate between 2002 and 2018 and the 2002 build-out level, a regression model was developed to empirically estimate the implied historical growth rates that measure how build-out levels affect future growth rates. In this model, the dependent variable is the housing growth rate (a linear annual growth rate) between 1993 and 2006 for each of the 566 municipalities. The independent variable is the 1993 build-out level and was estimated by dividing the number of housing units in 1993 with the sum of the 2006 housing units and the number of potential housing units that could be built after 2002. This equation applies to municipalities that had a positive growth between 1993 and 2006. However, for a few declining communities, this equation may end up a build-out ratio over 100 percent when the amount of housing units lost between 1993 and 2006 is larger than the post-2002 growth capacity. In this case, the build-out level is estimated by changing the denominator in this equation to the sum of the 1993 housing units and the number of potential housing units that could be built after 2002.*

Table No. 18 represents a summary of COAH's Third Round allocated housing growth for Cape May City based on the methodology above:

**TABLE NO. 18  
HOUSING ALLOCATION MODEL  
ALLOCATED GROWTH - HOUSING  
CITY OF CAPE MAY, NEW JERSEY**

UNITS IN 2002	UNITS IN 2004	2018 UNITS BASED ON HISTORIC GROWTH	2018 UNITS BASED ON "S" CURVE	UNITS ALLOCATED 2018	NET CHANGES 2004-2018	ANNUAL RATE OF CHANGE 2004-2018 (%)
4,092	4,129	4,274	4,145	4,145	16	0.0%

Source: Exhibit A, Appendix F, Chapter 5:97

The plan relies on the employment projections for the municipality as provided in Appendix F of COAH's rules (NJAC 5:97). COAH's projections rely on the following assumptions:

*Employment growth of a municipality should slow down as the municipality's nonresidential growth capacity (in terms of floor space) is being reached. In other words, a municipality is unlikely to sustain its historical growth rates as measured between the 1993 and 2002 period in the following 16 years if it is approaching 100 percent build-out.*

*To capture this relationship between the anticipated employment growth rate between 2002 and 2018 and the 2006 build-out level, a regression model was developed to empirically estimate the implied historical growth rates that measure how build-out levels affect future growth rates. In this model, the dependent variable is the employment growth rate (a linear annual growth rate) between 1993 and 2006 for each of the 566 municipalities. The independent variable is the 1993 build-out level and was estimated by dividing the number of employment in 1993 with the sum of the 2006 employment and the anticipated increase in employment after 2002 based on all nonresidential land being developed. This equation applies to municipalities that had a positive growth between 1993 and 2006. However, for a few declining communities, this equation may end up as a build-out ratio over 100 percent if more employment was lost between 1993 and 2006 than the potential employment growth after 2002. In this case, the build-out level is estimated by changing the denominator in this equation to the sum of the 1993 employment and post-2002 potential employment that could be accommodated by a full development of all nonresidential land.*

Table No. 19 is a summary of COAH's Third Round allocated employment growth for Cape May City:

**TABLE NO. 19  
EMPLOYMENT ALLOCATION MODEL  
ALLOCATED GROWTH - EMPLOYMENT  
CITY OF CAPE MAY, NEW JERSEY**

Employment in 2002	Employment in 2004	2018 Employment Based On Historic Growth	2018 Employment Based On "S" Curve	Employment Allocated 2018	Net Changes 2004 - 2018	Annual Rate of Change 2004 to 2018
5,337	5,848	5,899	7,098	5,899	51	0.06%

Source: Exhibit B, Appendix F, Chapter 5:97

### Mechanisms for Addressing Growth Share:

Mechanisms that a municipality may implement for addressing the fair share housing obligation are included in Chapter 5:97-6.1. Cape May proposes to address its growth share obligation as follows:

### Inclusionary Zoning:

Inclusionary zoning is a municipality's zoning that provides sufficient incentives to produce affordable housing. Incentives include but are not limited to increased densities and reduced costs to the developer. Zoning must provide a realistic opportunity for the creation of affordable housing. Inclusionary zoning may apply to all or some zones or sites within the municipality.

The City of Cape May has previously adopted an affordable housing ordinance (Ordinance 142A-2008 Adopted March 18, 2008) prior to the adoption of COAH's Revised Third Round rules and was not submitted to or approved by COAH. This ordinance provided for an inclusionary compensatory benefit that includes a density bonus above that normally permitted as indicated in Section 59-45 below:

A.

*In order to provide a compensatory benefit for development that requires the construction of affordable housing units or a payment in lieu thereof pursuant to this article, the developer shall be permitted to construct one additional market-rate unit over what the Zoning Ordinance would otherwise permit for each affordable housing unit required and constructed by the developer; and one-half of a market-rate unit over what the Zoning Ordinance would otherwise permit for each whole affordable housing unit required in the case where the developer makes a payment in lieu of constructing the unit.*

B.

*For purposes of this section, the following shall apply:*

(1)

*The Zoning Ordinance for the zone in which the affordable housing units are to be constructed shall be relaxed so as to permit such additional units with as little deviation from the bulk regulations as possible.*

(2)

*For projects that span more than one zoning district, the affordable housing units may be concentrated in the district that allows the higher level of density.*

(3)

*Floor area ratio, building height and setback requirements must be satisfied, subject to the granting of variance relief.*

(4)

*The Planning Board shall have jurisdiction over all plans submitted which utilize the compensatory benefit provisions of this section, subject to the Board of Adjustment's jurisdiction with respect to variances requested under N.J.S.A. 40:55D-70(d), in which case the Board of Adjustment shall also have jurisdiction to approve the compensatory benefit plan.*

The City desires to utilize this mechanism to address its affordable housing obligation. The requirements in the Code, as provided for by Ordinance 142A-2008 (see appendix), must be updated in accordance with the requirements of N.J.A.C. 5:97-6.4.

The City proposes to utilize a City wide inclusionary zoning benefit to address it's growth share. The following Table No. 20 illustrates the projected affordable housing units that could be generated by the proposed mechanism:

**TABLE NO. 20  
INCLUSIONARY ZONING  
PROJECTED AFFORDABLE UNITS  
CITY OF CAPE MAY, NEW JERSEY**

<b>ZONING DISTRICT</b>	<b>BASE DENSITY (unit/acre)</b>	<b>AVERAGE BASE DENSITY (unit/acre)</b>	<b>BUILDABLE VACANT LAND ESTIMATE* (acres)</b>	<b>MAX. BASE DENSITY UNITS</b>	<b>UNITS IN PARCELS ABOVE THRESHOLD (&lt;5 Units or 16 Jobs)</b>	<b>COAH UNITS WITH INCLUSIONARY INCENTIVE (&lt;5 Units or 16 Jobs)</b>
R1, R1A	4.65 (SF)	4.65	6.1	28	5	1
R2	5.81 (SF)	5.81	4.13	24	5	1
R3	6.97 (SF) 8.71 (SEMI) 11.62 (TWO) 17.42 (ATT./MULTI)	11.18	1.43	24	5	1
R3A	6.97 (SF)	6.97	.23	1	0	0
R4	6.97 (SF) 8.71 (SEMI)	7.84	1.06	8	0	0
R5	29.04 (SF) 29.04 (SEMI) 29.04 (TWO)	29.04	0	0	0	0
RS	6.97 (SF) 8.71 (SEMI) 11.62 (TWO) 17.42 (ATT./MULTI)	11.18	0.97	10	0	0
RC	4.36 (SF)	4.36	0	0	0	0
C1	29.04 (AO)	29.04	0	0	0	0
C2	29.04 (AO) EST.	29.04	0.72	20	20	4
C3	3.87 (SF) 5.81 (SEMI) 7.26 (TWO) 17.42 (MULTI)	8.59	0	0	0	0
NC	17.42 (MULTI)	17.42	0	0	0	0
C5	0	0	0.85	0	0	0
C6	6.97 (SF) 8.71 (SEMI)	7.84	0	0	0	0
HO	0	0	0	0	0	0
<b>Total</b>						<b>7</b>

Source: Cape May City Zoning, Chapter 525 & \*Cape May City Tax Assessor Records, Nov. 2008, Excludes parcels with environmental constraints and undersized lots.

Key: (SF) = Single family; (SEMI) = Semidetached Dwelling; (TWO) = Two family Dwelling; (ATT.) = Attached Dwelling; (MULTI) = Multifamily Dwelling; (AO) = Apartment Over Commercial

The proposed mechanism includes a compensatory benefit for development that requires the construction of affordable housing units or a payment in lieu thereof. All residential development consisting of less than five (5) residential units shall be exempt from providing affordable units or making a payment in lieu of. Non-residential development that results in the

creation of fewer than 16 jobs is also exempt from providing affordable units or making a payment in lieu of. Utilizing these thresholds, a vacant land analysis was performed for the City to determine the projected affordable units generated by this mechanism. Parcels that could yield development that would be over the thresholds were considered and units totaled. This analysis is summarized in Table No. 20 above and the proposed affordable units are seven (7).

#### Affordable Housing Trust Fund

To better enable Cape May to meet the low and moderate income housing need in the municipality, an affordable housing trust fund is proposed in accordance with N.J.A.C. 5:97-8. A development fee ordinance will be created that establishes a fee of one and one half (1 ½) percent of equalized assessed value for residential development and non-residential fee of two and one half (2 ½) percent of equalized assessed value. Payments in lieu of constructing affordable units on site where eligible shall also be collected. Use of the funds shall be included in a spending plan and may consist of (but not limited to) the following:

- Rehabilitation Program
- New Construction of Affordable Units and development costs
- Roads and Infrastructure directly serving affordable units
- Purchase of existing market rate or affordable housing for the purpose of maintaining or implementing affordability controls.
- Accessory apartment, market to affordable or partnership programs.
- Green building strategies designed to be cost saving for low and moderate income households.
- Maintenance and repair of affordable housing units.
- Affordability Assistance
- Administrative expenses

#### Market to Affordable Program

A market to affordable program includes units that are purchased or subsidized through an agreement with the property owner and sold or rented to low- and moderate-income households. The municipality shall provide a minimum of \$25,000 per unit to subsidize each moderate income unit and \$30,000 per unit to subsidize each low income unit with additional subsidy depending on market prices and rent within the municipality. Funding shall be provided through the development fee ordinance.

At the time they are offered for sale or rent, units may be new, pre-owned or vacant and must be in sound condition. The maximum rent for a moderate-income unit shall be affordable to households earning no more than 60 percent of median income and the maximum rent for a low-income unit shall be affordable to households earning no more than 44 percent of median income. The maximum sales price for a moderate-income unit shall be affordable to households earning no more than 70 percent of median income and the maximum sales price for a low-

income unit shall be affordable to households earning no more than 40 percent of median income.

No more than ten (10) for-sale and ten (10) rental units may be used to address the City's obligation at this time.

#### Accessory Apartment Program

An accessory apartment program shall be established in accordance with N.J.A.C. 5:97-6.8 by ordinance to permit accessory apartments, provided the units are affordable to low- and moderate-income households.

The municipality shall provide a minimum of \$20,000 per unit to subsidize the creation of each moderate-income accessory apartment or \$25,000 to subsidize the creation of each low-income accessory apartment. Subsidy may be used to fund actual construction costs and/or to provide compensation for reduced rental rates.

No more than 10, or an amount equal to 10 percent of the fair share obligation accessory apartments, whichever is greater, may be used to address the City's fair share obligation.

APPENDIX I

STATE OF NJ  
DEPARTMENT OF COMMUNITY AFFAIRS  
COUNCIL ON AFFORDABLE HOUSING  
PETITION APPLICATION

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## **ACCESSORY APARTMENTS (N.J.A.C. 5:97-6.8)**

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### **General Description**

Municipality/County: City of Cape May, Cape May County

Affordable Units Proposed: 10

Family: 10

Low-Income: \_\_\_\_\_

Moderate-Income: \_\_\_\_\_

Age-Restricted: \_\_\_\_\_

Low-Income: \_\_\_\_\_

Moderate-Income: \_\_\_\_\_

Average expenditure:

For each low-income unit: \$ 25,000

For each moderate-income unit: \$ 20,000

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### **Information and Documentation Required with Petition**

- ☒ Project/Program Information Form (previously known as Project/Program Monitoring Form. If relying on previously submitted 2007 monitoring and/or subsequent CTM update, also check here ☒ in lieu of submitting forms.)
- ☒ Draft or adopted accessory apartment ordinance
- ☒ Documentation of funding sources
- ☒ Municipal resolution appropriating funds from general revenue or a resolution of intent to bond in the event of a funding shortfall
- ☒ Demonstration that the housing stock lends itself to accessory apartments
- ☒ Demonstration that there is water and sewer infrastructure with sufficient capacity to serve the proposed accessory apartments (indicate below type of infrastructure)
  - ☒ Public water and sewer system; OR
  - ☐ If served by individual well and/or septic system, the municipality must show that the well and/or septic system meet the appropriate NJDEP standards and have sufficient capacity for additional unit



**Information and Documentation Required Prior to Substantive Certification**

- ☐ Resolution or executed contract designating an experienced Administrative Agent, and a statement of his/her qualifications, in accordance with N.J.A.C. 5:96-18
- ☐ Adopted operating manual that includes a description of program procedures and administration or a statement indicating that the Administrative Agent designated to run the program uses a COAH-approved manual
- ☐ Affirmative Marketing Plan in accordance with UHAC

**Accessory Apartment Narrative Section**

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## MARKET TO AFFORDABLE PROGRAM (N.J.A.C. 5:97-6.9)

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### General Description

Municipality/County: City of Cape May

Affordable Units Proposed: 10

Family Rentals: \_\_\_\_\_

Low-Income: \_\_\_\_\_

Moderate-Income: \_\_\_\_\_

Age-Restricted Rentals: \_\_\_\_\_

Low-Income: \_\_\_\_\_

Moderate-Income: \_\_\_\_\_

Family For-Sale: \_\_\_\_\_

Low-Income: \_\_\_\_\_

Moderate-Income: \_\_\_\_\_

Age-Restricted For-Sale: \_\_\_\_\_

Low-Income: \_\_\_\_\_

Moderate-Income: \_\_\_\_\_

Average expenditure:

For each low-income unit: \$ 30,000 min.

For each moderate-income unit: \$ 25,000min

Bonuses, if applicable:

Rental bonuses as per N.J.A.C. 5:97-3.5: \_\_\_\_\_

Rental bonuses as per N.J.A.C. 5:97-3.6(a): \_\_\_\_\_

Very low income bonuses as per N.J.A.C. 5:97-3.7<sup>1</sup>: \_\_\_\_\_

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### Information and Documentation Required with Petition

☒ Project/Program Information Form (previously known as Project/Program Monitoring Form. If relying on previously submitted 2007 monitoring and/or subsequent CTM update, also check here ☒ in lieu of submitting forms.)

- ☒ Demonstration that there are sufficient market-rate units within the municipality on the multiple listing service for a viable program
- ☒ Estimate of the amount required to subsidize typical for-sale and/or rental units including any anticipated rehabilitation costs
- ☒ Documentation of funding sources
- ☒ Municipal resolution appropriating funds from general revenue or a resolution of intent to bond in the event of a funding shortfall
- ☐ Spending plan including the details to implement this program

**Information and Documentation Required Prior to Substantive Certification**

- ☐ Resolution or executed contract designating an experienced Administrative Agent, and a statement of his/her qualifications, in accordance with N.J.A.C. 5:96-18
- ☐ Adopted operating manual that includes a description of program procedures and administration or a statement indicating that the Administrative Agent designated to run the program uses a COAH-approved manual
- ☐ Affirmative Marketing Plan in accordance with UHAC

**Market to Affordable Narrative Section**

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<sup>1</sup> Pursuant to PL 2008 c.46, Very Low-Income bonuses may only be granted for very low-income units that exceed 13 percent of the of the housing units made available for occupancy by low-income and moderate income households.

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## ZONING FOR INCLUSIONARY DEVELOPMENT (N.J.A.C. 5:97-6.4)

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(Submit separate checklist for each site or zone)

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### General Description

Municipality/County: City of Cape May

Project Name/Zoning Designation: City wide inclusionary zoning

Block(s) and Lot(s): \_\_\_\_\_

Total acreage: \_\_\_\_\_ Proposed density (units/gross acre): \_\_\_\_\_

Affordable Units Proposed: 7

Family: \_\_\_\_\_ Sale: \_\_\_\_\_ Rental: \_\_\_\_\_

Very low-income units: \_\_\_\_\_ Sale: \_\_\_\_\_ Rental: \_\_\_\_\_

Age-Restricted: \_\_\_\_\_ Sale: \_\_\_\_\_ Rental: \_\_\_\_\_

Market-Rate Units Anticipated: \_\_\_\_\_

Non-Residential Development Anticipated (in square feet), if applicable: \_\_\_\_\_

Will the proposed development be financed in whole or in part with State funds, be constructed on State-owned property or be located in an Urban Transit Hub or Transit Village? ☐ Yes ☒ No

#### Bonuses for affordable units, if applicable:

Rental bonuses as per N.J.A.C. 5:97-3.5: \_\_\_\_\_

Rental bonuses as per N.J.A.C. 5:97-3.6(a): \_\_\_\_\_

Very low income bonuses as per N.J.A.C. 5:97-3.7<sup>1</sup>: \_\_\_\_\_

Smart growth bonuses as per N.J.A.C. 5:97-3.18: \_\_\_\_\_

Redevelopment bonuses as per N.J.A.C. 5:97-3.19: \_\_\_\_\_

Compliance bonuses as per N.J.A.C. 5:97-3.17: \_\_\_\_\_

Date inclusionary zoning adopted: \_\_\_\_\_ Date development approvals granted: \_\_\_\_\_

### **Information and Documentation Required with Petition**

- ☒ Project/Program Information Form (previously known as Project/Program Monitoring Form. If relying on previously submitted 2007 monitoring and/or subsequent CTM update, check here ☒ in lieu of submitting forms.)
- ☒ Draft or adopted zoning or land use ordinance, which includes the affordable housing requirement and minimum presumptive density for the site/zone.
- ☐ Copies of all decisions made on applications for affordable housing development subsequent to adoption of the current zoning

**If payments in lieu of on-site construction of the affordable units is an option, submit:**

- ☒ Proposed or adopted ordinance establishing the amount of the payments
- ☐ Spending plan

**A general description of the site or zone, including:**

- ☐ Name and address of owner
- ☐ Name and address of developer(s)
- ☐ Subject property street location
- ☒ Indicate if urban center or workforce housing census tract
- ☒ Previous zoning designation and date previous zoning was adopted
- ☒ Current zoning and date current zoning was adopted
- ☒ Description of any changes to bulk standards intended to accommodate the proposed densities
- ☒ Tax maps showing the location of site(s) with legible dimensions (electronic if available)

**A description of the suitability of the site, including:**

- ☒ Description of surrounding land uses
- ☒ Demonstration that the site has street access
- ☒ Planning Area and/or Special Resource Area designation(s) i.e., PA1, PA2, PA3, PA4, PA5, CAFRA, Pinelands, Highlands, Meadowlands, etc., including a discussion on consistency with the State Development and Redevelopment Plan (SDRP) and/or other applicable special resource area master plans
- ☒ Demonstration that there is or will be adequate water capacity per N.J.A.C. 5:97-1.4 or that the site is subject to a durational adjustment per N.J.A.C. 5:97-5.4
- ☒ Demonstration that there is or will be adequate sewer capacity per N.J.A.C. 5:97-1.4 or that the site is subject to a durational adjustment per N.J.A.C. 5:97-5.4

**A description (including maps if applicable) of any anticipated impacts that result from the following environmental constraints:**

- ☒ Wetlands and buffers
- ☐ Steep slopes
- ☒ Flood plain areas

- ☐ Stream classification and buffers
- ☐ Critical environmental site
- ☒ Historic or architecturally important site/district
- ☐ Contaminated site(s); proposed or designated brownfield site
- ☒ Based on the above, a quantification of buildable and non-buildable acreage

**Agreements with developers or approvals for development of specific property, which shall include:**

- ☐ Number, tenure and type of units
- ☐ Compliance with N.J.A.C. 5:97-9 and UHAC
- ☐ Progress points at which the developer shall coordinate with the Municipal Housing Liaison

**Information and Documentation Required Prior to Marketing the Completed Units**

- ☐ Resolution or executed contract designating an experienced Administrative Agent, and a statement of his/her qualifications, in accordance with N.J.A.C. 5:96-18
- ☐ Adopted operating manual that includes a description of program procedures and administration or a statement indicating that the Administrative Agent designated to run the program uses a COAH-approved manual
- ☐ An affirmative marketing plan in accordance with UHAC

**Zoning Narrative Section**

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<sup>1</sup> Pursuant to PL 2008 c.46, Very Low-Income bonuses may only be granted for very low-income units that exceed 13 percent of the of the housing units made available for occupancy by low-income and moderate income households.

**City of Cape May, County of Cape May, State of New Jersey**

**ORDINANCE NO. \_\_\_\_\_-2009**

**ACCESSORY APARTMENT ORDINANCE**

**AN ORDINANCE OF THE CITY OF CAPE MAY TO ADDRESS THE REQUIREMENTS OF THE COUNCIL ON AFFORDABLE HOUSING (COAH) REGARDING ACCESSORY APARTMENTS**

**Section 1. SUMMARY**

The City of Cape May has used zoning opportunities to meet its affordable housing needs by permitting accessory apartments. The ordinance allows owners of a principle dwelling to create an accessory apartment complying with the requirements of N.J.A.C. 5:97-9 and N.J.A.C. 5:97-6.8(c). No more than 10 accessory apartments shall be permitted in the City as per N.J.A.C. 5:97-6.8(b).

**Section 2. REQUIREMENTS**

- A. Purpose and Zoning Districts. It is the purpose of this section to allow accessory apartments within the residential zoning districts within the City to provide for the development of affordable housing to meet the affordable housing needs of low and moderate income residents. This mechanism allows for the use of the city's existing and proposed dwellings and accessory buildings to be utilized for affordable housing opportunities. Accessory apartments shall also be permitted for all zoning districts that allow apartments over commercial uses.
- B. Accessory apartments shall be permitted within the new or existing principle dwelling building or within an existing accessory building that contains an existing dwelling unit.
- C. The minimum floor area for any accessory apartment shall be 350 square feet.
- D. Floor area ratio requirements shall not apply to existing building conversions. Floor area ratio requirements shall apply to expansions or new construction.
- E. Principle buildings shall have only one principle access entry orientated toward the street on which it fronts and the accessory apartment access shall be provided so that it has a separate distinct entry which does not detract from the character of the principle building.

It is the intent to provide accessory apartments while preserving the character of the neighborhood and principle building.

- E. Parking shall be provided in accordance with the Residential Site Improvement Standards (N.J.A.C. 5:21-4.14).
- F. Accessory apartments shall contain at minimum: Living/sleeping space, cooking facilities with kitchen sink and complete bathroom with shower and sanitary facilities.
- G. Parking shall be provided in accordance with the Residential Site Improvement Standards (N.J.A.C. 5:21-4.14).
- H. Compliance with affordable housing regulations.
  - 1. The occupant must meet the income limitations set forth at N.J.A.C. 5:97 et seq.
  - 2. The accessory apartment shall meet the minimum 10 year control period set forth at N.J.A.C. 5:97 et seq.
  - 3. Rents for accessible apartments shall meet the affordable standards for low and moderate incomes as per COAH regulations.
  - 4. Evidence of recorded deed or declaration of covenants an restrictions running with the land and limiting the subsequent rental or sale within the affordable housing requirements set forth at N.J.A.C. 5:97 et seq. and stated herein shall be required.
  - 5. Compliance with all other affordable housing requirements set forth at N.J.A.C. 5:97 et seq. is required.
- I. Administration.
  - 1. The City of Cape May shall designate an administrative entity by municipal resolution to administrate the accessory apartment program.
  - 2. Administration duties shall be in accordance with set forth at N.J.A.C. 5:97 et seq.
  - 3. In accordance with N.J.A.C. 5:97-6.8(b)2, the City of Cape May shall provide a minimum of \$20,000 per unit to subsidize the creation of each moderate-income accessory apartment or \$25,000 to subsidize the creation of each low-income accessory apartment. Subsidy may be used to fund actual construction costs and/or to provide compensation for reduced rental rates.



- J. Review. Applicants for the creation of an accessory apartment shall submit plans of building(s) showing layout of accessory apartment and principle building, entry location, and elevations showing entry locations. A site development plan shall be provided to demonstrate compliance with zoning and parking regulations. Supplemental information demonstrating compliance with this section is required.

I.

### **Section 3 - REPEALER**

All Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

### **Section 4 - SEVERABILITY**

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

### **Section 5 - EFFECTIVE DATE**

This ordinance shall take effect upon passage and publication as provided by law.

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**City of Cape May, County of Cape May, State of New Jersey**

**ORDINANCE NO. \_\_\_\_\_-2009**

**AFFORDABLE HOUSING ORDINANCE**

AN ORDINANCE OF THE CITY OF CAPE MAY TO ADDRESS THE REQUIREMENTS OF THE COUNCIL ON AFFORDABLE HOUSING (COAH) REGARDING COMPLIANCE WITH THE MUNICIPALITY'S PRIOR ROUND AND THIRD ROUND AFFORDABLE HOUSING OBLIGATIONS

**Section 1. Affordable Housing Obligation**

- (a) This Ordinance is intended to assure that low- and moderate-income units ("affordable units") are created with controls on affordability over time and that low- and moderate-income households shall occupy these units. This Ordinance shall apply except where inconsistent with applicable law.
- (b) The City of Cape May Planning Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. The Fair Share Plan has been endorsed by the governing body. The Fair Share Plan describes the ways The City of Cape May shall address its fair share for low- and moderate-income housing as determined by the Council on Affordable Housing (COAH) and documented in the Housing Element.
- (c) This Ordinance implements and incorporates the Fair Share Plan and addresses the requirements of N.J.A.C. 5:97, as may be amended and supplemented.
- (d) The City of Cape May shall file monitoring reports with COAH in accordance with N.J.A.C. 5:96, tracking the status of the implementation of the Housing Element and Fair Share Plan. Any plan evaluation report of the Housing Element and Fair Share Plan and monitoring prepared by COAH in accordance with N.J.A.C. 5:96 shall be available to the public at the City of Cape May Municipal Building, Municipal Clerk's Office, 643 Washington Avenue, Cape May City, New Jersey, 08204 or from COAH at 101 South Broad Street, Trenton, New Jersey and on COAH's website, [www.nj.gov/dca/affiliates/coah](http://www.nj.gov/dca/affiliates/coah).

**Section 2. Definitions**

The following terms when used in this Ordinance shall have the meanings given in this Section:

"Accessory apartment" means a self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters and a private entrance, which is created within an existing home, or through the conversion of an existing accessory structure on the same site, or by an addition to an existing home or accessory building, or by the construction of a new accessory structure on the same site.

"Act" means the Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.)

“Adaptable” means constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

“Administrative agent” means the entity responsible for the administration of affordable units in accordance with this ordinance, N.J.A.C. 5:96, N.J.A.C. 5:97 and N.J.A.C. 5:80-26.1 et seq.

“Affirmative marketing” means a regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.15.

“Affordability average” means the average percentage of median income at which restricted units in an affordable housing development are affordable to low- and moderate-income households.

“Affordable” means, a sales price or rent within the means of a low- or moderate-income household as defined in N.J.A.C. 5:97-9; in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

“Affordable development” means a housing development all or a portion of which consists of restricted units.

“Affordable housing development” means a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable development.

“Affordable housing program(s)” means any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality’s fair share obligation.

“Affordable unit” means a housing unit proposed or created pursuant to the Act, credited pursuant to N.J.A.C. 5:97-4, and/or funded through an affordable housing trust fund.

“Agency” means the New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1, et seq.).

“Age-restricted unit” means a housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that: 1) all the residents of the development where the unit is situated are 62 years or older; or 2) at least 80 percent of the units are occupied by one person that is 55 years or older; or 3) the development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as “housing for older persons” as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

“Assisted living residence” means a facility licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

“Certified household” means a household that has been certified by an Administrative Agent as a low-income household or moderate-income household.

“COAH” means the Council on Affordable Housing, which is in, but not of, the Department of Community Affairs of the State of New Jersey, that was established under the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.).

“DCA” means the State of New Jersey Department of Community Affairs.

“Deficient housing unit” means a housing unit with health and safety code violations that require the repair or replacement of a major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load bearing structural systems.

“Developer” means any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land proposed to be included in a proposed development including the holder of an option to contract or purchase, or other person having an enforceable proprietary interest in such land.

“Development” means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to N.J.S.A. 40:55D-1 et seq.

“Inclusionary development” means a development containing both affordable units and market rate units. This term includes, but is not necessarily limited to: new construction, the conversion of a non-residential structure to residential and the creation of new affordable units through the reconstruction of a vacant residential structure.

“Low-income household” means a household with a total gross annual household income equal to 50 percent or less of the median household income.

“Low-income unit” means a restricted unit that is affordable to a low-income household.

“Major system” means the primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building which include but are not limited to, weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement or load bearing structural systems.

“Market-rate units” means housing not restricted to low- and moderate-income households that may sell or rent at any price.

“Median income” means the median income by household size for the applicable county, as adopted annually by COAH.

“Moderate-income household” means a household with a total gross annual household income in excess of 50 percent but less than 80 percent of the median household income.

“Moderate-income unit” means a restricted unit that is affordable to a moderate-income household.

“Non-exempt sale” means any sale or transfer of ownership other than the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of

ownership through an executor's deed to a class A beneficiary and the transfer of ownership by court order.

"Random selection process" means a process by which currently income-eligible households are selected for placement in affordable housing units such that no preference is given to one applicant over another except for purposes of matching household income and size with an appropriately priced and sized affordable unit (e.g., by lottery).

"Regional asset limit" means the maximum housing value in each housing region affordable to a four-person household with an income at 80 percent of the regional median as defined by COAH's adopted Regional Income Limits published annually by COAH.

"Rehabilitation" means the repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

"Rent" means the gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances published by DCA for its Section 8 program. In assisted living residences, rent does not include charges for food and services.

"Restricted unit" means a dwelling unit, whether a rental unit or ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as may be amended and supplemented, but does not include a market-rate unit financed under UHORP or MONI.

"UHAC" means the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26.1 et seq.

"Very low-income household" means a household with a total gross annual household income equal to 30 percent or less of the median household income.

"Very low-income unit" means a restricted unit that is affordable to a very low-income household.

"Weatherization" means building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for rehabilitation.

### **Section 3. Affordable Housing Programs**

The City of Cape May has determined that it will use the following mechanisms to satisfy its affordable housing obligations:

(a) A Rehabilitation program.

1. The City of Cape May's rehabilitation program shall be designed to renovate deficient housing units occupied by low- and moderate-income households such that, after rehabilitation, these units will comply with the New Jersey State Housing Code pursuant to N.J.A.C. 5:28.
2. Both owner occupied and renter occupied units shall be eligible for rehabilitation funds.

**\*\*NOTE:** If there is a County rehabilitation program that the community is participating in, it must be identified in this ordinance. The basic framework of the

county program should be provided, including contact information for the public, any agreements as to the number of units the County will assist and any other parameters not otherwise included in this ordinance.

3. All rehabilitated units shall remain affordable to low- and moderate-income households for a period of 10 years (the control period). For owner occupied units the control period will be enforced with a lien and for renter occupied units the control period will be enforced with a deed restriction.
  4. The City of Cape May shall dedicate a minimum of \$10,000 for each unit to be rehabilitated through this program, reflecting the minimum hard cost of rehabilitation for each unit.
  5. The City of Cape May shall adopt a resolution committing to fund any shortfall in the rehabilitation programs for the City of Cape May.
  6. The City of Cape May shall designate, subject to the approval of COAH, one or more Administrative Agents to administer the rehabilitation program in accordance with N.J.A.C. 5:96 and N.J.A.C. 5:97. The Administrative Agent(s) shall provide a rehabilitation manual for the owner occupancy rehabilitation program and a rehabilitation manual for the rental occupancy rehabilitation program to be adopted by resolution of the governing body and subject to approval of COAH. Both rehabilitation manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s).
  7. Units in a rehabilitation program shall be exempt from N.J.A.C. 5:97-9 and Uniform Housing Affordability Controls (UHAC), but shall be administered in accordance with the following:
    - i. If a unit is vacant, upon initial rental subsequent to rehabilitation, or if a renter-occupied unit is re-rented prior to the end of controls on affordability, the deed restriction shall require the unit to be rented to a low- or moderate-income household at an affordable rent and affirmatively marketed pursuant to N.J.A.C. 5:97-9 and UHAC.
    - ii. If a unit is renter-occupied, upon completion of the rehabilitation, the maximum rate of rent shall be the lesser of the current rent or the maximum permitted rent pursuant to N.J.A.C. 5:97-9 and UHAC.
    - iii. Rents in rehabilitated units may increase annually based on the standards in N.J.A.C. 5:97-9.
    - iv. Applicant and/or tenant households shall be certified as income-eligible in accordance with N.J.A.C. 5:97-9 and UHAC, except that households in owner occupied units shall be exempt from the regional asset limit.
- (b) An Accessory Apartment program.
1. All accessory apartments shall meet the following conditions:
    - i. Accessory apartments are permitted by the Zoning Ordinance for various zoning districts, provided the units are affordable to low- and moderate-income households. Accessory apartments may be developed as low-income or

moderate-income units (accessory apartments may be limited to only low- or only moderate-income units as determined in the Fair Share Plan).

- ii. Accessory apartments shall comply with all applicable statutes and regulations of the State of New Jersey in addition to all building codes.
  - iii. At the time of initial occupancy of the unit and for at least ten years thereafter, the accessory apartment shall be rented only to a household which is either a low- or moderate-income household.
  - iv. Rents of accessory apartments shall be affordable to low- or moderate-income households as per COAH and UHAC regulations.
  - v. There shall be a recorded deed or declaration of covenants and restrictions applied to the property upon which the accessory apartment is located running with the land and limiting its subsequent rental or sale of the unit and the accessory apartment.
  - vi. The appropriate utility authority must certify that there is water and sewer infrastructure with sufficient capacity to serve the proposed accessory apartment. Where the proposed location is served by an individual well and/or septic system, the additional capacity necessitated by the new unit must meet the appropriate NJDEP standards.
  - vii. The City of Cape May accessory apartment program shall not restrict the number of bedrooms in any accessory apartment.
  - viii. No accessory apartment created as a result of this article or these regulations shall exceed the gross floor area of the existing principal dwelling on the lot.
2. The maximum number of creditable accessory apartments shall be equal to no more than 10 or an amount equal to 10 percent of the City of Cape May's fair share obligation, whichever is greater (additional units may be approved by COAH if the municipality has demonstrated successful completion of its accessory apartment program.).
  3. The City of Cape May shall designate an administrative entity to administer the accessory apartment program that shall have the following responsibilities:
    - i. The Administrative Agent shall administer the accessory apartment program, including advertising, income qualifying prospective renters, setting rents and annual rent increases, maintaining a waiting list, distributing the subsidy, securing certificates of occupancy, qualifying properties, handling application forms, filing deed restrictions and monitoring reports and affirmatively marketing the affordable accessory apartment program in accordance with the UHAC.
    - ii. The administrative entity shall only deny an application for an accessory apartment if the project is not in conformance with COAH's requirements and/or the provisions of this section/article. All denials shall be in writing with the reasons clearly stated.

- iii. In accordance with COAH requirements, The City of Cape May shall provide at least \$25,000 per unit to subsidize the creation of each low-income accessory apartment or \$20,000 per unit to subsidize the creation of each moderate-income accessory apartment. Subsidy may be used to fund actual construction costs and/or to provide compensation for reduced rental rates.
  - 4. Property owners wishing to apply to create an accessory apartment shall submit to the administrative entity:
    - i. A sketch of floor plan(s) showing the location, size and relationship of both the accessory apartment and the primary dwelling within the building or in another structure;
    - ii. Rough elevations showing the modifications of any exterior building façade to which changes are proposed; and
    - iii. A site development sketch showing the location of the existing dwelling and other existing buildings; all property lines; proposed addition, if any, along with the minimum building setback lines; the required parking spaces for both dwelling units; and any man-made conditions which might affect construction.
- (c) A Market to Affordable program.
  - 1. A market to affordable program is established to permit the purchase or subsidization of units through a written agreement with the property owner and sold or rented to low- and moderate-income households. Subject to the provisions of 2iii below, the market to affordable programs may produce both low- and moderate-income units (the program may be limited to only low- or only moderate-income units as per the Fair Share Plan).
  - 2. The following provisions shall apply to market to affordable programs:
    - i. At the time they are offered for sale or rental, eligible units may be new, pre-owned or vacant.
    - ii. The units shall be certified to be in sound condition as a result of an inspection performed by a licensed building inspector.
    - iii. The municipality will provide a minimum of \$25,000 per unit to subsidize each moderate-income unit and/or \$30,000 per unit to subsidize the each low-income unit, with additional subsidy depending on the market prices or rents in a municipality.
    - iv. The maximum number of creditable market to affordable units shall be equal to no more than 10 for sale units and 10 rental units or a combined total of 10 percent of the fair share obligation, whichever is greater. (Additional units may be approved by COAH if the municipality demonstrates the successful completion of its initial market to affordable program.)
  - 3. The units shall comply with N.J.A.C. 5:97-9 and UHAC with the following exceptions:
    - i. Bedroom distribution (N.J.A.C. 5:80-26.3(b) and (c));



- ii. Low/moderate income split (N.J.A.C. 5:80-26.3(a)); and
- iii. Affordability average (N.J.A.C. 5:80-26.3(d) and (e)); however:
  - A. The maximum rent for a moderate-income unit shall be affordable to households earning no more than 60 percent of median income and the maximum rent for a low-income unit shall be affordable to households earning no more than 44 percent of median income; and
  - B. The maximum sales price for a moderate-income unit shall be affordable to households earning no more than 70 percent of median income and the maximum sales price for a low-income unit shall be affordable to households earning no more than 40 percent of median income.

#### **Section 4. Reserved**

#### **Section 5. Reserved**

#### **Section 6. Reserved**

#### **Section 7. Inclusionary Zoning**

- (a) **Presumptive densities and set-asides.** To ensure the efficient use of land through compact forms of development and to create realistic opportunities for the construction of affordable housing, inclusionary zoning permits minimum presumptive densities and presumptive maximum affordable housing set-asides as follows:

##### **1. For Sale Developments**

- i. Inclusionary zoning in Planning Area 2 and designated centers permits residential development at a presumptive minimum gross density of six units per acre and a presumptive maximum affordable housing set-aside of 25 percent of the total number of units in the development;

The zoning of all zones within the City provides for a 25 percent set-aside for restricted units and a density of 6 units per acre.

##### **2. Rental Developments**

- i. Inclusionary zoning permits a presumptive minimum density of 12 units per acre and a presumptive maximum affordable housing set-aside of 20 percent of the total number of units in the development and the zoning provides for at least 10 percent of the affordable units to be affordable to households earning 30 percent or less of the area median income for the COAH region.

The zoning of all zones provides for a 20 percent set-aside for restricted units and a density of 12 units per acre.

- 3. Where an executed development agreement exists for affordable housing on a specific site or sites, list the sites below and identify the density and set-aside for each.

NO AGREEMENTS

4. Additional incentives to subsidize the creation of affordable housing available to very-low income households may be included in the zoning section of this ordinance or specified in a developer's or redeveloper's agreement.

*[Describe additional incentives to subsidize the creation of affordable housing available to very low income households here.]*

- (b) **Phasing.** In inclusionary developments the following schedule shall be followed:

Maximum Percentage of Market-Rate Units Completed	Minimum Percentage of Low- and Moderate-Income Units Completed
25	0
25+1	10
50	50
75	75
90	100

- (c) **Design.** In inclusionary developments, to the extent possible, low- and moderate-income units shall be integrated with the market units.
- (d) **Payments-in-lieu and off-site construction.** The standards for the collection of Payments-in-Lieu of constructing affordable units or standards for constructing affordable units off-site, shall be in accordance with N.J.A.C. 5:97-6.4.
- (e) **Utilities.** Affordable units shall utilize the same type of heating source as market units within the affordable development.

## **Section 8. New Construction**

The following general guidelines apply to all newly constructed developments that contain low- and moderate-income housing units, including any currently unanticipated future developments that will provide low- and moderate-income housing units.

- (a) **Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:**
  1. The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low income unit.
  2. In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units.
  3. Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
    - i. The combined number of efficiency and one-bedroom units shall be no greater than 20 percent of the total low- and moderate-income units;
    - ii. At least 30 percent of all low- and moderate-income units shall be two bedroom units;
    - iii. At least 20 percent of all low- and moderate-income units shall be three bedroom units; and

- iv. The remaining units may be allocated among two and three bedroom units at the discretion of the developer.
  - 4. Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development. The standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.
- (b) Accessibility Requirements:
- 1. The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14.
  - 2. All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
    - i. An adaptable toilet and bathing facility on the first floor;
    - ii. An adaptable kitchen on the first floor;
    - iii. An interior accessible route of travel on the first floor;
    - iv. An interior accessible route of travel shall not be required between stories within an individual unit;
    - v. An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and
    - vi. An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14, or evidence that the City of Cape May has collected funds from the developer sufficient to make 10 percent of the adaptable entrances in the development accessible:
      - A. Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
      - B. To this end, the builder of restricted units shall deposit funds within the City of Cape May's affordable housing trust fund sufficient to install accessible entrances in 10 percent of the affordable units that have been constructed with adaptable entrances.
      - C. The funds deposited under paragraph B. above shall be used by the City of Cape May for the sole purpose of making the adaptable entrance of any affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.

- D. The developer of the restricted units shall submit a design plan and cost estimate for the conversion from adaptable to accessible entrances to the Construction Official of the City of Cape May.
- E. Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14, and that the cost estimate of such conversion is reasonable, payment shall be made to the City of Cape May's affordable housing trust fund in care of the Municipal Treasurer who shall ensure that the funds are deposited into the affordable housing trust fund and appropriately earmarked.
- F. Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is site impracticable to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14.

(c) Maximum Rents and Sales Prices

- 1. In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC and in COAH, utilizing the regional income limits established by COAH.
- 2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60 percent of median income, and the average rent for restricted low- and moderate-income units shall be affordable to households earning no more than 52 percent of median income.
- 3. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units.
  - i. At least 10 percent of all low- and moderate-income rental units shall be affordable to households earning no more than 30 percent of median income.

**\*\*NOTE:** N.J.S.A. 52:27D-329.1 (P.L. 2008, C. 46) includes the requirement that all municipal fair share plans provide for the reservation of at least 13% of the affordable units for very low income households, i.e. households earning 30% or less of the median income. The new statute states that the requirement is not project-specific. Each municipality's version of this ordinance must reflect the determinations made in the Fair Share Plan as to the percentage of units necessary for very low income units in rental projects. Additional incentives to subsidize the creation of affordable housing available to very-low income households may be included in the zoning section of this ordinance or specified in a developer's or redeveloper's agreement.
- 4. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70 percent of median income, and each affordable development must achieve an affordability average of 55 percent for restricted ownership units; in achieving this affordability

average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type.

5. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units other than assisted living facilities, the following standards shall be used:
  - i. A studio shall be affordable to a one-person household;
  - ii. A one-bedroom unit shall be affordable to a one and one-half person household;
  - iii. A two-bedroom unit shall be affordable to a three-person household;
  - iv. A three-bedroom unit shall be affordable to a four and one-half person household; and
  - v. A four-bedroom unit shall be affordable to a six-person household.
6. In determining the initial rents for compliance with the affordability average requirements for restricted units in assisted living facilities, the following standards shall be used:
  - i. A studio shall be affordable to a one-person household;
  - ii. A one-bedroom unit shall be affordable to a one and one-half person household; and
  - iii. A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
7. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28 percent of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
8. The initial rent for a restricted rental unit shall be calculated so as not to exceed 30 percent of the eligible monthly income of the appropriate household size as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
9. The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.

10. The rent of low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed nine percent in any one year. Rents for units constructed pursuant to low- income housing tax credit regulations shall be indexed pursuant to the regulations governing low- income housing tax credits.
11. **Utilities.** Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance approved by DCA for its Section 8 program.

**The following general guidelines apply to all developments that contain low-and moderate-income housing units, including any currently unanticipated future developments that will provide low- and moderate-income housing units.**

**Section 9. Affirmative Marketing Requirements**

- (a) The City of Cape May shall adopt by resolution an Affirmative Marketing Plan, subject to approval of COAH, compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
- (b) The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward COAH Housing Region 6 and covers the period of deed restriction.
- (c) The Administrative Agent designated by the City of Cape May shall assure the affirmative marketing of all affordable units consistent with the Affirmative Marketing Plan for the municipality.
- (d) In implementing the affirmative marketing plan, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- (f) The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy.
- (g) The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner, unless otherwise determined or agreed to by the City of Cape May.

## **Section 10. Occupancy Standards**

- (a) In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the Administrative Agent shall strive to:
  - 1. Provide an occupant for each bedroom;
  - 2. Provide children of different sex with separate bedrooms; and
  - 3. Prevent more than two persons from occupying a single bedroom.
- (b) Additional provisions related to occupancy standards (if any) shall be provided in the municipal Operating Manual.

## **Section 11. Control Periods for Restricted Ownership Units and Enforcement Mechanisms**

- (a) Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this Ordinance until the City of Cape May elects to release the unit from such requirements however, and prior to such an election, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented, for at least 30 years.
- (b) The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- (c) Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the administrative agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value.
- (d) At the time of the first sale of the unit, the purchaser shall execute and deliver to the Administrative Agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first non-exempt sale after the unit's release from the requirements of this Ordinance, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.
- (e) The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- (f) A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all code standards upon the first transfer of title that follows the expiration of the applicable minimum control period provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.

## **Section 12. Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices**

Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:

- (a) The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
- (b) The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
- (c) The method used to determine the condominium association fee amounts and special assessments shall be indistinguishable between the low- and moderate-income unit owners and the market unit owners.
- (d) The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom.

## **Section 13. Buyer Income Eligibility**

- (a) Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50 percent of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80 percent of median income.
- (b) The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 33 percent of the household's certified monthly income.

## **Section 14. Limitations on indebtedness secured by ownership unit; subordination**

- (a) Prior to incurring any indebtedness to be secured by a restricted ownership unit, the administrative agent shall determine in writing that the proposed indebtedness complies with the provisions of this section.
- (b) With the exception of original purchase money mortgages, during a control period neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95 percent of the maximum allowable resale price of that unit, as such price is determined by the administrative agent in accordance with N.J.A.C.5:80-26.6(b).



### **Section 15. Control Periods for Restricted Rental Units**

- (a) Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this Ordinance until the City of Cape May elects to release the unit from such requirements pursuant to action taken in compliance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, and prior to such an election, a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented, for at least 30 years.
- (b) Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Cape May. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.
- (c) A restricted rental unit shall remain subject to the affordability controls of this Ordinance, despite the occurrence of any of the following events:
  - 1. Sublease or assignment of the lease of the unit;
  - 2. Sale or other voluntary transfer of the ownership of the unit; or
  - 3. The entry and enforcement of any judgment of foreclosure.

### **Section 16. Price Restrictions for Rental Units; Leases**

- (a) A written lease shall be required for all restricted rental units, except for units in an assisted living residence, and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.
- (b) No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.
- (c) Application fees (including the charge for any credit check) shall not exceed five percent of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.

### **Section 17. Tenant Income Eligibility**

- (a) Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:
  - 1. Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30 percent of median income.
  - 2. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50 percent of median income.

3. Moderate-income rental units shall be reserved for households with a gross household income less than 80 percent of median income.
- (b) The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35 percent (40 percent for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
1. The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
  2. The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
  3. The household is currently in substandard or overcrowded living conditions;
  4. The household documents the existence of assets with which the household proposes to supplement the rent payments; or
  5. The household documents proposed third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.
- (c) The applicant shall file documentation sufficient to establish the existence of the circumstances in (b)1 through 5 above with the Administrative Agent, who shall counsel the household on budgeting.

### **Section 18. Administration**

- (a) The position of Municipal Housing Liaison (MHL) for City of Cape May is established by this ordinance. The City of Cape May governing body shall make the actual appointment of the MHL by means of a resolution.
1. The MHL must be either a full-time or part-time employee of the City of Cape May.
  2. The person appointed as the MHL must be reported to COAH for approval.
  3. The MHL must meet all COAH requirements for qualifications, including initial and periodic training.  
  
 \*\*NOTE: if the MHL position is one that will always be included in the job description for a particular position in the local staff, e.g. Township Clerk, that position can be named in this ordinance.
  4. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the City of Cape May, including the following responsibilities which may not be contracted out to the Administrative Agent:

- i. Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;
  - ii. The implementation of the Affirmative Marketing Plan and affordability controls.
  - iii. When applicable, supervising any contracting Administrative Agent.
  - iv. Monitoring the status of all restricted units in the City of Cape May's Fair Share Plan;
  - v. Compiling, verifying and submitting annual reports as required by COAH;
  - vi. Coordinating meetings with affordable housing providers and Administrative Agents, as applicable; and
  - vii. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by COAH.
- (b) The City of Cape May shall designate by resolution of the City council, subject to the approval of COAH, one or more Administrative Agents to administer newly constructed affordable units in accordance with N.J.A.C. 5:96, N.J.A.C. 5:97 and UHAC.
- (c) An Operating Manual shall be provided by the Administrative Agent(s) to be adopted by resolution of the governing body and subject to approval of COAH. The Operating Manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s).
- \*\*NOTE:** If it is decided that an employee of the municipality will act as administrative agent or if the Housing Affordability Service (HAS) of the Agency is selected, the determination of such can be included in this ordinance.
- (d) The Administrative Agent shall perform the duties and responsibilities of an administrative agent as are set forth in UHAC and which are described in full detail in the Operating Manual, including those set forth in N.J.A.C. 5:80-26.14, 16 and 18 thereof, which includes:
- 1. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by COAH;
  - 2. Affirmative Marketing;
  - 2. Household Certification;
  - 3. Affordability Controls;
  - 4. Records retention;
  - 5. Resale and re-rental;
  - 6. Processing requests from unit owners; and
  - 7. Enforcement, though the ultimate responsibility for retaining controls on the units rests with the municipality.

8. The Administrative Agent shall have authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.

### **Section 19. Enforcement of Affordable Housing Regulations**

- (a) Upon the occurrence of a breach of any of the regulations governing the affordable unit by an Owner, Developer or Tenant the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- (b) After providing written notice of a violation to an Owner, Developer or Tenant of a low- or moderate-income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the municipality may take the following action against the Owner, Developer or Tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
  1. The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is found by the court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the court:
    - i. A fine of not more than [insert amount] or imprisonment for a period not to exceed 90 days, or both. Each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;
    - ii. In the case of an Owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the City of Cape May Affordable Housing Trust Fund of the gross amount of rent illegally collected;
    - iii. In the case of an Owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.
  2. The municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the low- and moderate-income unit.
- (c) Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the low- and moderate-income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary

to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating Owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.

- (d) The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the municipality for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the municipality.
- (e) Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The Owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
- (f) If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the municipality may acquire title to the low- and moderate-income unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.
- (g) Failure of the low- and moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the Owner to accept an offer to purchase from any qualified purchaser which may be referred to the Owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- and moderate-income unit as permitted by the regulations governing affordable housing units.

- (h) The Owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the Owner.

### **Section 20. Appeals**

Appeals from all decisions of an Administrative Agent designated pursuant to this Ordinance shall be filed in writing with the Executive Director of COAH.

### **REPEALER**

All Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

### **SEVERABILITY**

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

### **EFFECTIVE DATE**

This ordinance shall take effect upon passage and publication as provided by law.

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**City of Cape May, County of Cape May, State of New Jersey**

**ORDINANCE NO. \_\_\_\_\_-2009**

**AN ORDINANCE AMENDING CHAPTER 59 OF THE CODE TO  
FACILITATE AFFORDABLE HOUSING DEVELOPMENT FEES**

**1. Purpose**

- a) In Holmdel Builder's Association V. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (the Act), N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules.
- b) Pursuant to P.L.2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from non-residential development.
- c) This ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance P.L.2008, c.46, Sections 8 and 32-38. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing low- and moderate-income housing. This ordinance shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:97-8.

**2. Basic requirements**

- a) This ordinance shall not be effective until approved by COAH pursuant to *N.J.A.C. 5:96-5.1*, except that non-residential fees shall be collected in accordance with the Statewide Non-Residential Development Fee Act, *N.J.S.A. 40:55D-8.1 et seq.*
- b) The City of Cape May shall not spend development fees until COAH has approved a plan for spending such fees in conformance with *N.J.A.C. 5:97-8.10* and *N.J.A.C. 5:96-5.3*.

### 3. Definitions

- a) The following terms, as used in this ordinance, shall have the following meanings:
  - i. **“Affordable housing development”** means a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable development.
  - ii. **“COAH”** or the **“Council”** means the New Jersey Council on Affordable Housing established under the Act which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State.
  - iii. **“Development fee”** means money paid by a developer for the improvement of property as permitted in *N.J.A.C. 5:97-8.3*.
  - iv. **“Developer”** means the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.
  - v. **“Equalized assessed value”** means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 of P.L.1973, c.123 (C.54:1-35a through C.54:1-35c).
  - vi. **“Green building strategies”** means those strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

### 4. Residential Development fees

- a) Imposed fees
  - i. All residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and a half ( 1 ½ ) percent of the equalized assessed value for residential development provided no increased density is permitted.
  - ii. When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a “d” variance) has been permitted, developers may be required to pay a development fee of one and a half ( 1 ½ ) percent of the equalized assessed value for each additional unit that may be realized. However, if the zoning on a site has changed during the two-year period preceding the filing of



such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal one and a half percent of the equalized assessed value on the first two units; and the specified higher percentage up to six percent of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

- b) Eligible exactions, ineligible exactions and exemptions for residential development
  - i. Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.
  - ii. Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.
  - iii. Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced, or is expanded, if the expansion is not otherwise exempt from the development fee requirement. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.
  - iv. Developers of any residential dwelling units demolished and replaced (no increase in units) as a result of a natural disaster shall be exempt from paying a development fee.

## **5. Non-residential Development fees**

- a) Imposed fees
  - i. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two and one-half (2.5) percent of the equalized assessed value of the land and

improvements, for all new non-residential construction on an unimproved lot or lots.

- ii. Non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and one-half (2.5) percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.
  - iii. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and a half percent (2.5%) shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly improved structure, i.e. land and improvement, at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.
- b) Eligible exactions, ineligible exactions and exemptions for non-residential development
- i. The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the two and a half (2.5) percent development fee, unless otherwise exempted below.
  - ii. The 2.5 percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
  - iii. Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to P.L.2008, c.46, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" Form. Any exemption claimed by a developer shall be substantiated by that developer.
  - iv. A developer of a non-residential development exempted from the non-residential development fee pursuant to P.L.2008, c.46 shall be subject to it at such time the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.
  - v. If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the City of Cape May as a lien against the real property of the owner.

## **6. Collection procedures**

- a) Upon the granting of a preliminary, final or other applicable approval, for a development, the applicable approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit.
- b) For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF “State of New Jersey Non-Residential Development Certification/Exemption” to be completed as per the instructions provided. The developer of a non-residential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF. The Tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- c) The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development which is subject to a development fee.
- d) Within 90 days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
- e) The construction official responsible for the issuance of a final certificate of occupancy notifies the local assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
- f) Within 10 business days of a request for the scheduling of a final inspection, the municipal assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- g) Should the City of Cape May fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in subsection b. of section 37 of P.L.2008, c.46 (C.40:55D-8.6).
- h) Fifty percent of the development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible

for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.

i) Appeal of development fees

- 1) A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest bearing escrow account by the City of Cape May. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
- 2) A developer may challenge non-residential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by the City of Cape May. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

**7. Affordable Housing trust fund**

- a) There is hereby created a separate, interest-bearing housing trust fund to be maintained by the chief financial officer of the City of Cape May for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.
- b) The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
  1. payments in lieu of on-site construction of affordable units;
  2. developer contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible;
  3. rental income from municipally operated units;
  4. repayments from affordable housing program loans;
  5. recapture funds;
  6. proceeds from the sale of affordable units; and
  7. any other funds collected in connection with City of Cape May's affordable housing program.
- c) Within seven days from the opening of the trust fund account, the City of Cape May shall provide COAH with written authorization, in the form of a three-party

escrow agreement between the municipality, the bank, and COAH to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:97-8.13(b).

- d) All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH.

## **8 Use of funds**

- a) The expenditure of all funds shall conform to a spending plan approved by COAH. Funds deposited in the housing trust fund may be used for any activity approved by COAH to address the City of Cape May's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable, or regional housing partnership programs, conversion of existing non-residential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted pursuant to N.J.A.C. 5:97-8.7 through 8.9 and specified in the approved spending plan.
- b) Funds shall not be expended to reimburse the City of Cape May for past housing activities.
- c) At least 30 percent of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30 percent or less of median income by region.
  - i. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, and assistance with emergency repairs.
  - ii. Affordability assistance to households earning 30 percent or less of median income may include buying down the cost of low or moderate income units in the municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income.

- iii. Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- d) The City of Cape May, may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:96-18.
- e) No more than 20 percent of all revenues collected from development fees, may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20 percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.

## **9. Monitoring**

- a) The City of Cape May shall complete and return to COAH all monitoring forms included in monitoring requirements related to the collection of development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with City of Cape May's housing program, as well as to the expenditure of revenues and implementation of the plan certified by COAH. All monitoring reports shall be completed on forms designed by COAH.

## **10. Ongoing collection of fees**

- a) The ability for City of Cape May to impose, collect and expend development fees shall expire with its substantive certification unless the City of Cape May has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned for substantive certification, and has received COAH's approval of its development fee ordinance. If the City of Cape May fails to renew its ability to impose and collect development fees prior to the expiration of substantive certification, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of

P.L.1985, c.222 (C.52:27D-320). The City of Cape May shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its substantive certification or judgment of compliance, nor shall the City of Cape May retroactively impose a development fee on such a development. The City of Cape May shall not expend development fees after the expiration of its substantive certification or judgment of compliance.

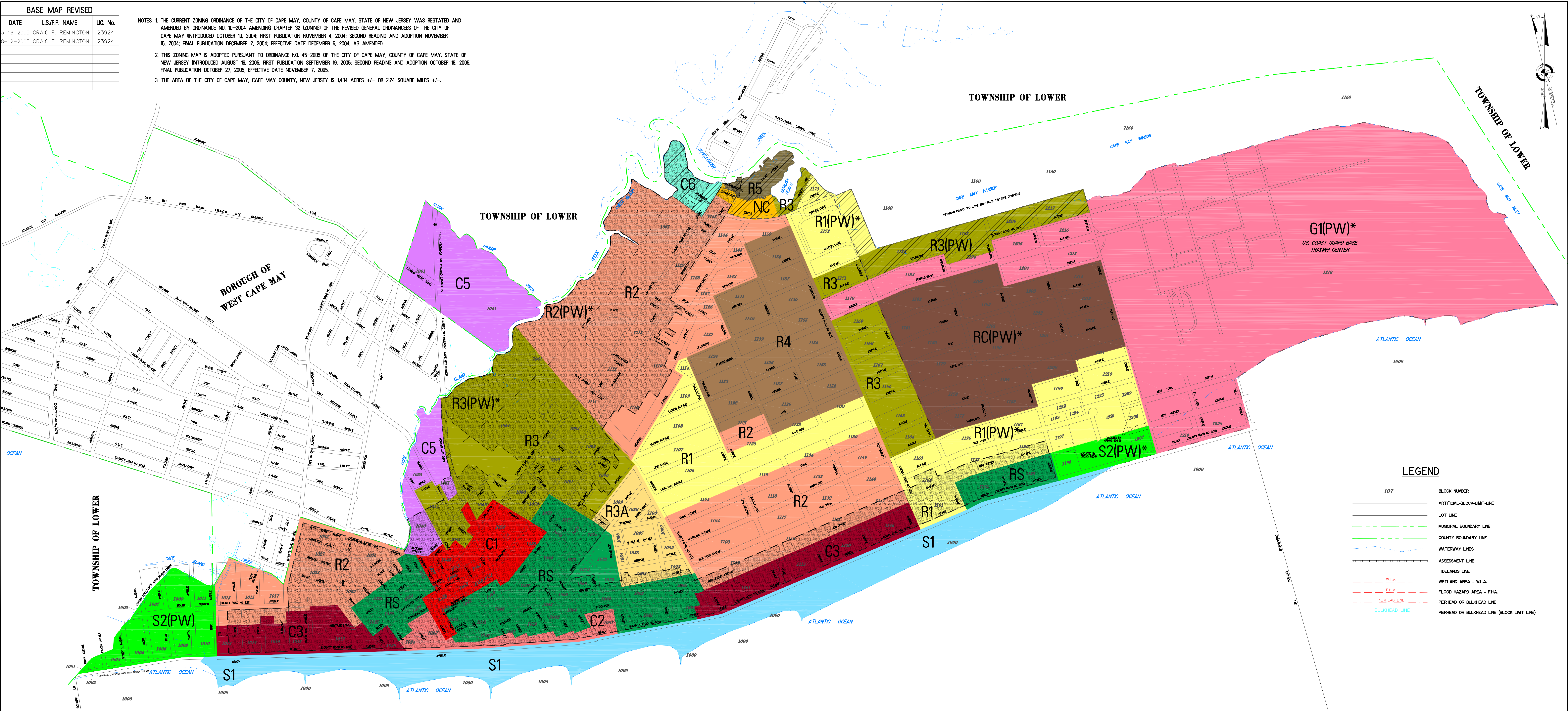


BASE MAP REVISED		
DATE	L.S./P. NAME	LIC. No.
3-18-2005	CRAIG F. REMINGTON	23924
8-12-2005	CRAIG F. REMINGTON	23924

NOTES: 1. THE CURRENT ZONING ORDINANCE OF THE CITY OF CAPE MAY, COUNTY OF CAPE MAY, STATE OF NEW JERSEY WAS RESTATED AND AMENDED BY ORDINANCE NO. 10-2004 AMENDING CHAPTER 32 (ZONING) OF THE REVISED GENERAL ORDINANCES OF THE CITY OF CAPE MAY (INTRODUCED OCTOBER 19, 2004; FIRST PUBLICATION NOVEMBER 4, 2004; SECOND READING AND ADOPTION NOVEMBER 15, 2004; FINAL PUBLICATION DECEMBER 2, 2004; EFFECTIVE DATE DECEMBER 5, 2004, AS AMENDED.

2. THIS ZONING MAP IS ADOPTED PURSUANT TO ORDINANCE NO. 45-2005 OF THE CITY OF CAPE MAY, COUNTY OF CAPE MAY, STATE OF NEW JERSEY (INTRODUCED AUGUST 16, 2005; FIRST PUBLICATION SEPTEMBER 19, 2005; SECOND READING AND ADOPTION OCTOBER 18, 2005; FINAL PUBLICATION OCTOBER 27, 2005; EFFECTIVE DATE NOVEMBER 7, 2005.

3. THE AREA OF THE CITY OF CAPE MAY, CAPE MAY COUNTY, NEW JERSEY IS 1,434 ACRES +/- OR 2.24 SQUARE MILES +/-.



LEGEND	
107	BLOCK NUMBER
	ARTIFICIAL-BLOCK-LMT-LINE
	LOT LINE
	MUNICIPAL BOUNDARY LINE
	COUNTY BOUNDARY LINE
	WATERWAY LINES
	ASSESSMENT LINE
	TIDELANDS LINE
	WETLAND AREA - WLA
	FLOOD HAZARD AREA - FHA
	PIERHEAD LINE
	PIERHEAD OR BULKHEAD LINE (BLOCK LMT LINE)

## ZONING DISTRICT DESIGNATIONS

LAST REVISED: 10-18-2005	
R1	LOW DENSITY RESIDENTIAL DISTRICT [32-9]
R2	LOW-MEDIUM DENSITY RESIDENTIAL DISTRICT [32-10]
R3	MEDIUM DENSITY RESIDENTIAL DISTRICT [32-11]
R3A	MEDIUM DENSITY RESIDENTIAL (RESTRICTED) DISTRICT [32-12]
R4	MODIFIED MEDIUM DENSITY RESIDENTIAL DISTRICT [32-13]
RS	MEDIUM HIGH DENSITY RESIDENTIAL DISTRICT [32-14]
RC	RESIDENTIAL-SEASONAL DISTRICT [32-15]
RS	RESIDENTIAL CLUSTER DISTRICT [32-4-16]
C1	PRIMARY BUSINESS DISTRICT [32-23]
C2	BEACH BUSINESS DISTRICT [32-24]
C3	HOTEL-MOTEL DISTRICT [32-25]
NC	NEIGHBORHOOD COMMERCIAL DISTRICT [32-26]
C5	SERVICE BUSINESS-LIGHT INDUSTRIAL DISTRICT [32-28]
C6	MARINA DISTRICT [32-29]
HO	HARBOR OVERLAY DISTRICT [32-30]

S1	BEACH STRAND DISTRICT [32-31]
S2	DUNE STABILIZATION DISTRICT [32-31.3]
G1	GOVERNMENT DISTRICT [32-32]
HPD	HISTORIC PRESERVATION DISTRICT [32-33]
(PW)	PRESERVED WETLANDS BOUNDARIES [32-45.6]

(\*) Actual boundaries of the wetlands are subject to detailed surveying by property owners and authorized agencies pursuant to applicable State and Federal laws.

R1 LOW DENSITY RESIDENTIAL	
BLOCK	LOTS
1105	1-12
1106	1-12
1107	1-12
1108	1-12
1109	1-12
1110	1-12
1111	1-12
1112	1-12
1113	1-12
1114	1-12
1115	1-12
1116	1-12
1117	1-12
1118	1-12
1119	1-12
1120	1-12
1121	1-12
1122	1-12
1123	1-12
1124	1-12
1125	1-12
1126	1-12
1127	1-12
1128	1-12
1129	1-12
1130	1-12
1131	1-12
1132	1-12
1133	1-12
1134	1-12
1135	1-12
1136	1-12
1137	1-12
1138	1-12
1139	1-12
1140	1-12
1141	1-12
1142	1-12
1143	1-12
1144	1-12
1145	1-12
1146	1-12
1147	1-12
1148	1-12
1149	1-12
1150	1-12
1151	1-12
1152	1-12
1153	1-12
1154	1-12
1155	1-12
1156	1-12
1157	1-12
1158	1-12
1159	1-12

R2 LOW-MEDIUM DENSITY RESIDENTIAL	
BLOCK	LOTS
1012	1-11 & 19-26
1013	1-11 & 19-26
1014	1-11 & 19-26
1015	1-11 & 19-26
1016	1-11 & 19-26
1017	1-11 & 19-26
1018	1-11 & 19-26
1019	1-11 & 19-26
1020	1-11 & 19-26
1021	1-11 & 19-26
1022	1-11 & 19-26
1023	1-11 & 19-26
1024	1-11 & 19-26
1025	1-11 & 19-26
1026	1-11 & 19-26
1027	1-11 & 19-26
1028	1-11 & 19-26
1029	1-11 & 19-26
1030	1-11 & 19-26
1031	1-11 & 19-26
1032	1-11 & 19-26
1033	1-11 & 19-26
1034	1-11 & 19-26
1035	1-11 & 19-26
1036	1-11 & 19-26
1037	1-11 & 19-26
1038	1-11 & 19-26
1039	1-11 & 19-26
1040	1-11 & 19-26
1041	1-11 & 19-26
1042	1-11 & 19-26
1043	1-11 & 19-26
1044	1-11 & 19-26
1045	1-11 & 19-26
1046	1-11 & 19-26
1047	1-11 & 19-26
1048	1-11 & 19-26
1049	1-11 & 19-26
1050	1-11 & 19-26
1051	1-11 & 19-26
1052	1-11 & 19-26
1053	1-11 & 19-26
1054	1-11 & 19-26
1055	1-11 & 19-26
1056	1-11 & 19-26
1057	1-11 & 19-26
1058	1-11 & 19-26
1059	1-11 & 19-26
1060	1-11 & 19-26
1061	1-11 & 19-26
1062	1-11 & 19-26
1063	1-11 & 19-26
1064	1-11 & 19-26
1065	1-11 & 19-26
1066	1-11 & 19-26
1067	1-11 & 19-26
1068	1-11 & 19-26
1069	1-11 & 19-26
1070	1-11 & 19-26
1071	1-11 & 19-26
1072	1-11 & 19-26
1073	1-11 & 19-26
1074	1-11 & 19-26
1075	1-11 & 19-26
1076	1-11 & 19-26
1077	1-11 & 19-26
1078	1-11 & 19-26
1079	1-11 & 19-26
1080	1-11 & 19-26
1081	1-11 & 19-26
1082	1-11 & 19-26
1083	1-11 & 19-26
1084	1-11 & 19-26
1085	1-11 & 19-26
1086	1-11 & 19-26
1087	1-11 & 19-26
1088	1-11 & 19-26
1089	1-11 & 19-26
1090	1-11 & 19-26
1091	1-11 & 19-26
1092	1-11 & 19-26
1093	1-11 & 19-26
1094	1-11 & 19-26
1095	1-11 & 19-26
1096	1-11 & 19-26
1097	1-11 & 19-26
1098	1-11 & 19-26
1099	1-11 & 19-26
1100	1-11 & 19-26

R3 MEDIUM DENSITY RESIDENTIAL	
BLOCK	LOTS
1001	1-12
1002	1-12
1003	1-12
1004	1-12
1005	1-12
1006	1-12
1007	1-12
1008	1-12
1009	1-12
1010	1-12
1011	1-12
1012	1-12
1013	1-12
1014	1-12
1015	1-12
1016	1-12
1017	1-12
1018	1-12
1019	1-12
1020	1-12
1021	1-12
1022	1-12
1023	1-12
1024	1-12
1025	1-12
1026	1-12
1027	1-12
1028	1-12
1029	1-12
1030	1-12
1031	1-12
1032	1-12
1033	1-12
1034	1-12
1035	1-12
1036	1-12
1037	1-12
1038	1-12
1039	1-12
1040	1-12
1041	1-12
1042	1-12
1043	1-12
1044	1-12
1045	1-12
1046	1-12
1047	1-12
1048	1-12
1049	1-12
1050	1-12
1051	1-12
1052	1-12
1053	1-12
1054	1-12
1055	1-12
1056	1-12
1057	1-12
1058	1-12
1059	1-12
1060	1-12
1061	1-12
1062	1-12
1063	1-12
1064	1-12
1065	1-12
1066	1-12
1067	1-12
1068	1-12
1069	1-12
1070	1-12
1071	1-12
1072	1-12
1073	1-12
1074	1-12
1075	1-12
1076	1-12
1077	1-12
1078	1-12
1079	1-12
1080	1-12
1081	1-12
1082	1-12
1083	1-12
1084	1-12
1085	1-12
1086	1-12
1087	1-12
1088	1-12
1089	1-12
1090	1-12
1091	1-12
1092	1-12
1093	1-12
1094	1-12
1095	1-12
1096	1-12
1097	1-12
1098	1-12
1099	1-12
1100	1-12

R4 MODIFIED MEDIUM DENSITY RESIDENTIAL	
BLOCK	LOTS
1101	1-12
1102	1-12
1103	1-12
1104	1-12
1105	1-12
1106	1-12
1107	1-12
1108	1-12
1109	1-12
1110	1-12
1111	1-12
1112	1-12
1113	1-12
1114	1-12
1115	1-12
1116	1-12
1117	1-12
1118	1-12
1119	1-12
1120	1-12
1121	1-12
1122	1-12
1123	1-12
1124	1-12
1125	1-12
1126	1-12
1127	1-12
1128	1-12
1129	1-12
1130	1-12
1131	1-12
1132	1-12
1133	1-12
1134	1-12
1135	1-12
1136	1-12
1137	1-12
1138	1-12
1139	1-12
1140	1-12
1141	1-12
1142	1-12
1143	1-12
1144	1-12
1145	1-12
1146	1-12
1147	1-12
1148	1-12
1149	1-12
1150	1-12
1151	1-12
1152	1-12
1153	1-12
1154	1-12
1155	1-12
1156	1-12
1157	1-12
1158	1-12
1159	1-12
1160	1-12

R5 MEDIUM HIGH DENSITY RESIDENTIAL DISTRICT	
BLOCK	LOTS
1101	1-12
1102	1-12
1103	1-12
1104	1-12
1105	1-12
1106	1-12
1107	1-12
1108	1-12
1109	1-12
1110	1-12
1111	1-12
1112	1-12
1113	1-12
1114	1-12
1115	1-12
1116	1-12
1117	1-12
1118	1-12
1119	1-12
1120	1-12
1121	1-12
1122	1-12
1123	1-12
1124	1-12
1125	1-12
1126	1-12
1127	1-12
1128	1-12
1129	1-12
1130	1-12
1131	1-12
1132	1-12
1133	1-12
1134	1-12
1135	1-12
1136	1-12
1137	1-12
1138	1-12
1139	1-12
1140	1-12
1141	1-12
1142	1-12
1143	1-12
1144	1-12
1145	1-12
1146	1-12
1147	1-12
1148	1-12
1149	1-12
1150	1-12
1151	1-12
1152	1-12
1153	1-12
1154	1-12
1155	1-12
1156	1-12
1157	1-12
1158	1-12
1159	1-12
1160	1-12

INDUSTRIAL DISTRICT	
	BLOCK
	1012
	1014
	1016
	1018
	1019
	1020
	1021
	1022
	1024
	1025
	1026
	1027
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	1029
	1030
	1031
	1032
	1033
	1034
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	1036
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	1038
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